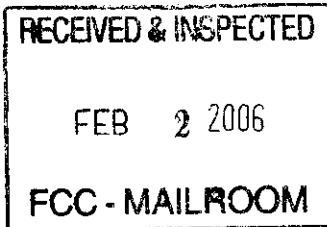




# CITY OF SUNNYVALE

P.O. BOX 3707 • SUNNYVALE, CA 94088-3707 • (408) 730-7464 • FAX (408) 730-7468

Office of the City Attorney



## MEMORANDUM

**TO:** Marlene Dortch  
Office of the Secretary  
Federal Communications Commission  
9300 East Hampton Drive  
Capitol Heights, MD 20743

Via Federal Express

**FROM:** Ms. Sam Roberts, Paralegal to  
Rebecca L. Moon, Assistant City Attorney

**DATE:** January 31, 2006

**RE:** In the matter of Implementation of Section 621(a)(1) of the Cable  
communications Policy Act of 1984 as amended by the Cable Television  
consumer Protection and Competition Act of 1992  
MB Docket No. 05-311

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Enclosed please find an **original and five (5) copies** of the **COMMENTS OF CITY OF SUNNYVALE, CALIFORNIA** in regard to the above matter before the Federal Communications Commission.

Note that copies have also been served on FCC staff John Norton and Andrew Long, as well as a copy sent to [info@natoa.org](mailto:info@natoa.org) per the filing instructions.

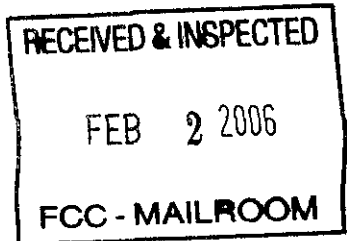
Please return one copy to us in the envelope provided stamped received or other acknowledgment.

Thank you.

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554



\_\_\_\_\_  
In the Matter of )  
Implementation of Section 621(a)(1) of )  
the Cable Communications Policy Act of 1984 )  
as amended by the Cable Television Consumer )  
Protection and Competition Act of 1992 )  
\_\_\_\_\_

MB Docket No. 05-311

**COMMENTS OF CITY OF SUNNYVALE, CALIFORNIA**

These Comments are filed by CITY OF SUNNYVALE, CALIFORNIA, in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the City of Sunnyvale believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

**Cable Franchising in Our Community**

**Community Information**

The City of Sunnyvale, California, is a City with a population of 131,700. Our franchised cable provider(s) is/are Comcast of California IX, Inc. Our community's most recent cable franchise was negotiated in 1990.

**Our Current Franchise**

Our current franchise began on December 14, 1990, and expired in December of 2005. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the City of Sunnyvale, CA, in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

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**ORIGINAL**

We require the cable operator to provide the 3 channels for public, educational, and governmental ("PEG") access channels on the cable system. We currently have 1 channel devoted to public access; 1 channel devoted to educational access; and 1 channel devoted to government access.

Our franchise requires that our PEG channels be supported by the cable operator through live program origination capability from three locations and technical assistance. The cable operator also made a one-time capital contribution of \$450,000 for equipment and facilities.

Our franchise requires that the Company provide the City with an emergency alert system capable of simultaneous emergency override of the audio signals of all activated video channels with remote coded access activation. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchise requires that the Company meet specified customer service standards regarding matters such as telephone response times, repair requests and handling of complaints. These customer service obligations help us to ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise.

Our franchise requires that the cable operator provide universal service to residentially zoned areas of the city, and service to non-residentially zoned areas which meet the service density requirement of 35 residential dwelling units per underground mile.

In order to ensure that our residents had access to current telecommunications technologies, our 1990 franchise required that the Company rebuild the existing system to have a minimum capacity of 54 downstream 6 MHz video channels. Although our system was state of the art after the rebuild fifteen years ago, it now lacks the capacity to support On Demand programming and other newer digital technologies which the Company offers in neighboring communities.

Our franchise requires the Company to post a \$175,000 construction bond, a \$50,000 compliance bond, and a \$20,000 security deposit. During the construction phase of the rebuild, the Company was required to maintain comprehensive general liability insurance with limits of \$5,000,000 per occurrence, which subsequently dropped to \$2,000,000 after completion of construction.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office before it may access the public rights of way for purposes of performing excavations, street work, construction, etc.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: rights of inspection, financial audits, and liquidated damages.

## **The Franchising Process**

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise does not specifically address changes in law, however, our cable ordinance (Sunnyvale Municipal Code §5.46.140(a), provides that, in the event of a conflict between a local requirement and State or Federal law, the franchisee will be excused from performance as long as it acts in good faith.

## **Competitive Cable Systems**

Our community was recently approached by SBC with an informal preliminary proposal to provide a competing video programming service without a franchise agreement. No negotiations have taken place at this time.

- We have never denied any provider the opportunity to serve in our community.
- We do have mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

## **Conclusions**

The local cable franchising process functions well in the City of Sunnyvale. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional

networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Sunnyvale therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of *the local franchising process* as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,



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Amy Chan, City Manager  
City of Sunnyvale  
456 West Olive Avenue  
Sunnyvale, CA 94086

cc: NATOA, [info@natoa.org](mailto:info@natoa.org)  
John Norton, [John.Norton@fcc.gov](mailto:John.Norton@fcc.gov)  
Andrew Long, [Andrew.Long@fcc.gov](mailto:Andrew.Long@fcc.gov)